

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

FRIENDS OF ANIMALS,

Plaintiff,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the United States,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff, Friends of Animals, brings this action to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* Specifically, Friends of Animals challenges the failure of the United States Bureau of Land Management (BLM) to provide responsive documents within the time required under FOIA.

2. On May 30, 2019, Friends of Animals submitted a FOIA request to BLM for documents and records held by BLM relating to surgeons, veterinarians, and biologists contracted to perform or assist with ovariectomy (spay) surgeries and follow-up care and research on wild horses at the Oregon Wild Horse and Burro Corral Facility in Hines, Oregon, from the time period starting January 1, 2018 through the date BLM completes the response to the FOIA request (Control Number FOIA 2019-00775).

3. As of the date of this Complaint, BLM has not provided any documents in response to this request.

4. BLM is unlawfully withholding public disclosure of information that Friends of Animals is entitled to receive under FOIA. BLM failed to comply with the statutory

mandates and deadlines imposed by FOIA by failing to provide documents resolving Friends of Animals' request within the time required by law. By failing to respond to Friends of Animals' FOIA request, BLM is unlawfully impeding Friends of Animals' access to government information that it is entitled to receive under FOIA. Accordingly, Friends of Animals seeks declaratory relief establishing that BLM violated FOIA. Friends of Animals also seeks injunctive relief directing BLM to promptly provide the requested material free of cost.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question). This Court has the authority to grant declaratory relief under 28 U.S.C. §§ 2201 *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552 (a)(4)(B) (FOIA). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiff and Defendant. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in the district where the complainant resides or has a principle place of business. Plaintiff, Friends of Animals' Wildlife Law Program resides in Colorado and has a principal place of business in Centennial, Colorado. Venue is also proper under 28 U.S.C. § 1391(b) because Defendant is subject to the Court's personal jurisdiction in this judicial district.

PARTIES

7. Plaintiff, FRIENDS OF ANIMALS, is a non-profit international advocacy organization incorporated in the State of New York since 1957. Friends of Animals has

nearly 200,000 members and is the requester of the records that Defendant, BLM, is now withholding. Friends of Animals has offices in Darien, Connecticut and Centennial, Colorado. Friends of Animals' Wildlife Law Program, the office filing this Complaint, was established in 2013 and is located at 7500 E. Arapahoe Road, Suite 385, Centennial, Colorado.

8. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues, and the organization's progress in addressing these issues, through its magazine, *Action Line*, its website, social media, and other reports. Friends of Animals has published articles and information advocating for the protection of wildlife species, including wild horses, so that they can live unfettered in their natural habitats. Friends of Animals regularly submits requests under FOIA to further its goals and mission. BLM's refusal to comply with FOIA injures Friends of Animals, its members, and its staff by preventing them from using the requested information to advocate for their mission.

9. Friends of Animals qualifies as a noncommercial requester under the standard established by Congress in FOIA.

10. Friends of Animals seeks these documents to illuminate in a clear and direct way how BLM is selecting surgeons, anesthetists, and biologists who will take part in any ovariectomy (spay) surgeries performed at the Oregon Wild Horse and Burro Corral Facility in Hines, Oregon. As such, the release of these records will significantly contribute to public understanding and oversight of BLM's operations, specifically the standards and protocols BLM requires of its surgeons, veterinarians, and biologists that are contracted to perform and/or assist in any ovariectomy (spay) surgeries, follow-up care, and related research. The prompt release of this information is essential due to immediate public

interest. The requested data will help Friends of Animals to further its mission and deepen public understanding of how BLM is selecting surgeons, anesthetists, and biologists that are contracted to perform and/or assist in any ovariectomy (spay) surgeries, follow-up care, and related research because Friends of Animals has the ability to distribute information to its members and other interested members of the public through its website, its quarterly journal *ActionLine*, and through outreach to other media outlets.

11. BLM's failure to provide the requested records impedes Friends of Animals' access to government information and hinders Friends of Animals' ability to carry out its organizational mission. The production of these records will redress the harm and enable Friends of Animals to finally communicate to the public a fuller understanding of BLM's operations concerning wild horses, specifically the standards and protocols BLM requires of its surgeons, veterinarians, anesthetists, and biologists that are contracted to perform and/or assist in any ovariectomy (spay) surgeries, follow-up care, and related research.

12. Defendant, UNITED STATES BUREAU OF LAND MANAGEMENT, is an agency of the United States housed within the Department of the Interior and has possession of the documents that Plaintiff, Friends of Animals, seeks. BLM is an agency within the meaning of 5 U.S.C. § 552(f). BLM has possession and control of the requested records and is responsible for fulfilling Friends of Animals' FOIA request.

LEGAL FRAMEWORK: FREEDOM OF INFORMATION ACT

13. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. The burden is on the government—not the public—to substantiate why information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(4)(B).

14. FOIA imposes mandatory deadlines on federal agencies when they receive a request for records pursuant to FOIA. FOIA requires agencies to respond within twenty working days after the receipt of any such request with their determination and must immediately notify the person making such request of its determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination. *Id.* § 552 (a)(6)(A).

15. On determination by an agency to comply with the request, the records shall be made “promptly available.” *Id.* § 552(a)(6)(C).

16. In “unusual circumstances” an agency may extend the time limits up to ten working days by providing written notice to the requester setting forth the unusual circumstance and the date on which the determination is expected to be dispatched. *Id.* § 552(a)(6)(B).

17. With respect to a request for which a written notice purports to apply the “unusual circumstances,” the agency must: (1) notify the requester if the request cannot be processed within the time limit; (2) provide the requester with an opportunity to limit the scope of the request so that it may be processed within that time or provide an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request; and (3) make available its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the agency. *Id.* § 552(a)(6)(B)(ii).

18. As a general matter, a FOIA requester must exhaust administrative appeal remedies before seeking judicial redress. However, if an agency does not adhere to certain statutory timelines (twenty workdays or thirty workdays in “unusual circumstances”), then by statute the requester is deemed to have fulfilled the exhaustion requirement. *Id.* § 552(a)(6)(C)(i).

19. Additionally, if the agency fails to comply with the statutory time limit, it cannot assess search fees. *Id.* § 552(a)(4)(A)(viii).

20. Department FOIA regulations provide for a tracked response process that distinguishes requests based on the estimated number of workdays needed to respond. 43 C.F.R. § 2.15(a). “Simple” requests take between one to five workdays to process; “Normal” requests take between six to twenty workdays to process; “Complex” requests take between twenty-one and sixty workdays to process; and “Exceptional/Voluminous” requests, which involve “very complex processing challenges” and potentially include a large number of responsive records, take over sixty workdays to process. *Id.* § 2.15(c)(1)-(4).

21. The agency must advise the requestor of the track into which the request falls. *Id.* § 2.15(e).

22. The use of multi-track processing does not alter FOIA’s statutory deadline for an agency to determine whether to comply with the FOIA request. *Id.* § 2.15(f). An agency must make a determination whether to comply with the FOIA request, and notify the requester accordingly, within the mandatory deadlines described above.

23. Agencies are also required to provide an estimated completion date. 5 U.S.C. § 552(a)(7)(B)(ii).

24. United States district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

FACTUAL BACKGROUND

25. Friends of Animals submitted its FOIA request to BLM’s National FOIA Office on May 30, 2019. The FOIA request was submitted via email.

26. Friends of Animals requested “copies of all documents and records held by the United States Bureau of Land Management (BLM) relating to surgeons, veterinarians, and biologists contracted to perform or assist with ovariectomy (spay) surgeries and follow-up care and research on wild horses at the Oregon Wild Horse and Burro Corral

Facility in Hines, Oregon from the time period starting January 1, 2018 through the date BLM completes the response to this FOIA request.”

27. Specifically, Friends of Animals requested all documents and records in BLM’s possession, whether received, created, and/or distributed by BLM, including, but not limited to the following: “(1) documents and records relating to surgeons or veterinarians contracted by BLM to perform ovariectomy (spay) surgeries on wild horses removed from Warm Springs Herd Management Area (HMA) in October 2018 or otherwise contracted to perform ovariectomy (spay) surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (2) documents and records relating to proposals and applications submitted by BLM for surgeons or veterinarians to perform ovariectomy (spay) surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (3) documents and records relating to proposals and applications submitted to BLM for surgeons or veterinarians to perform ovariectomy (spay) surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (4) documents and records relating to anesthetists contracted by BLM to take part in ovariectomy surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (5) documents and records relating to proposals and applications submitted to BLM for anesthetists to take part in ovariectomy (spay) surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (6) documents and records relating to proposals and applications submitted by BLM for anesthetists to take part in ovariectomy (spay) surgeries on wild horses at the Oregon Wild Horse and Burro Corral Facility; (7) documents and records relating to biologists contracted by either BLM or the United States Geological Survey (USGS) that would fit radio collars and tags on wild horses returned to the Warm Springs HMA; (8) documents and records relating to training records for all individuals who will take part in ovariectomy surgeries and follow-up care and research in the Oregon Wild Horse and Burro Corral Facility and the Warm Springs HMA; (9) documents and records relating to protocols and/or guidance documents that surgeons, veterinarians, and others are, or will be, required to

follow in performing ovariectomy surgeries in the Oregon Wild Horse and Burro Corral Facility; and (10) documents and records relating to standards and/or requirements for surgeons or veterinarians contracted by BLM to perform ovariectomy (spay) surgeries on wild horses in the Oregon Wild Horse and Burro Corral Facility.”

28. On June 3, 2019, Friends of Animals received an email from BLM’s Washington Office FOIA Coordinators acknowledging that it received the FOIA request on May 30, 2019 and assigning a Control Number 2019-00775. The email further stated that the request falls into the Complex track and would therefore be processed in twenty-one to sixty workdays.

29. After receiving no response or correspondence from BLM within twenty-one to sixty workdays, on August 21, 2019, Friends of Animals emailed BLM’s FOIA Coordinator to inquire about the May 30, 2019 FOIA request. Friends of Animals asked that BLM provide a date in which Friends of Animals could expect to receive a response as well as an estimated date of completion.

30. Friends of Animals received no response to the August 21, 2019 email.

31. On September 5, 2019, Friends of Animals sent another email to BLM’s FOIA Coordinator to again inquire about the May 30, 2019 FOIA request. Once again, Friends of Animals asked BLM to provide a date in which Friends of Animals could expect to start receiving records related to the request as well as an estimated date of completion.

32. Two weeks later, on September 19, 2019, BLM responded that the “request should be completed in the next 30-60 business days.” BLM provided neither a date in which Friends of Animals could expect to receive a response nor an estimated date of completion.

33. As of the date of this Complaint, Friends of Animals has not received any further email responses or correspondence from BLM’s Washington Office FOIA Coordinators concerning the May 30, 2019 FOIA request.

34. As of the date of this Complaint, BLM has not provided any documents in response to Friends of Animals' FOIA request that Friends of Animals submitted over five months ago.

35. BLM offered no reasonable explanation for its delay, and it failed to provide a specific date for when it will comply with its obligations under FOIA.

36. BLM is unlawfully withholding public disclosure of information sought by Friends of Animals, information to which Friends of Animals is entitled to receive, and for which BLM has not provided a valid disclosure exemption.

CLAIM FOR RELIEF
(Violation of the Freedom of Information Act)

37. Friends of Animals herein incorporates all information and allegations contained in the preceding paragraphs.

38. Friends of Animals properly requested records within the control of BLM on May 30, 2019.

39. BLM failed to make a determination on Friends of Animals' request within the time required by law and failed to make any claims of statutory exemption regarding the requested records.

40. As of the date of this Complaint, BLM has not provided any documents or records in response to Friends of Animals' FOIA request.

41. As of the date of this Complaint, BLM has not provide an estimated date of completion for when it expects to respond to Friends of Animals' FOIA request.

42. As of the date of the Complaint, BLM has not made any claims of statutory exemption with regard to the records and documents requested in Friends of Animals' FOIA request.

43. Accordingly, Friends of Animals is entitled to injunctive and declaratory relief with respect to the release and disclosure of the records requested.

REQUEST FOR RELIEF

Friends of Animals respectfully requests that the Court enter judgment providing the following relief:

- A. Declare that BLM violated the Freedom of Information Act by failing to lawfully satisfy Friends of Animals' request under the Freedom of Information Act;
- B. Order BLM to process and immediately release all records responsive to Friends of Animals' request at no cost to Friends of Animals;
- C. Retain jurisdiction of this action to ensure the processing of Friends of Animals' request, and to ensure that no agency records are wrongfully withheld;
- D. Award Friends of Animals costs, including reasonable attorney fees and litigation costs in this action, pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E); and
- E. Grant Plaintiff any other relief that the Court deems just and proper.

Dated: November 8, 2019

Respectfully submitted,

/s/ Courtney R. McVean

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